

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 LINDA COX,

5 Plaintiff,

6 v.

7 RICHLAND HOLDINGS, INC. d/b/a  
8 ACCOUNT CORP OF SOUTHERN  
9 NEVADA; PARKER AND EDWARDS,  
INC.; and LANGSDALE LAW FIRM, P.C.

10 Defendants.

Case No. 2:16-cv-02914-APG-VCF

**ORDER GRANTING DEFENDANT  
LANGSDALE'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

(ECF Nos. 24, 72)

11 Plaintiff Linda Cox sues defendants Richland Holdings, Inc. d/b/a Account Corp of  
12 Southern Nevada (Account Corp), Parker and Edwards, Inc. (P&E), and Langsdale Law Firm,  
13 P.C. for alleged actions arising from the attempted collection of a debt. Cox claims that all  
14 defendants are liable for violations of the Fair Debt Collection Practices Act (FDCPA), the  
15 Nevada Deceptive Trade Practices Act (NDTPA), and for abuse of process under Nevada law.

16 Langsdale moves to dismiss the claims against it. Because Cox does not allege any facts  
17 that give rise to violations of the FDCPA or any state law, I grant Langsdale's motion to dismiss  
18 with leave to amend.<sup>1</sup>

19 **I. BACKGROUND**

20 In June 2016, Account Corp retained P&E to file a state court collection action against  
21 Cox for a debt owed from a contract with Advanced Laparoscopic and General Surgery. ECF No.  
22 1 at 2. Account Corp alleged that Cox became delinquent in December 2015, with an account  
23 balance of \$816.82. *Id.* Account Corp further alleged that a "contractual collection fee" of  
24 \$408.41 was added for a total of \$1,225.23. *Id.*

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27 <sup>1</sup> Langsdale also filed a motion for summary judgment. ECF No. 72. Because I am  
28 granting Langsdale's motion for judgment on the pleadings, I will deny the motion for summary  
judgment without prejudice as moot.

1 On August 23, 2016, Langsdale filed a substitution of attorney and replaced P&E as  
2 Account Corp’s counsel. *Id.* at 3. A few months later, Cox’s attorney, Vernon Nelson, emailed  
3 Langsdale to inform the firm that Nelson was representing Cox, and requested a two-week  
4 extension to file an answer to Account Corp’s complaint. *Id.* Nelson also requested a copy of any  
5 validation letter Langsdale may have sent to Cox, and various other documents. *Id.* at 4. On  
6 November 7, 2016, Langsdale emailed Nelson to inform him that Account Corp “made an  
7 economic/business decision to dismiss many of the cases that were previously filed with former  
8 counsel” and that a notice of dismissal had been filed in Cox’s case.<sup>2</sup> *Id.* at 4.

9 Cox filed this action in December 2016. As relevant here,<sup>3</sup> Cox alleges that the  
10 contractual collection fee was unlawfully added to her debt; Account Corp, P&E, and Langsdale  
11 “failed to provide Cox with a validation of debt letter in compliance with section 1692G (sic) of  
12 the FDCPA;” and Langsdale did not serve Cox with a copy of the substitution of attorney notice  
13 “in violation of the FDCPA.” *Id.* at 3. She alleges that all defendants abused process by  
14 commencing legal proceedings against her for “the ulterior purpose of collecting unlawful fees in  
15 violation of the FDCPA.” *Id.* at 6. Cox further alleges that all defendants violated the NDTPA by  
16 “engag[ing] in unfair or deceptive acts in the conduct of [their] commerce or trade through [their]  
17 unfair and deceptive debt collection and litigation activities . . . .” *Id.* Langsdale moves for  
18 judgment on the pleadings, arguing that Cox failed to plead sufficient facts demonstrating that  
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21 <sup>2</sup> Cox asks that I take judicial notice of three exhibits she attached to her opposition. They  
22 consist of: (1) a copy of the collection action’s docket; (2) copies of various orders and filings in  
23 the collection action; and (3) the email communications between Nelson and Langsdale that were  
24 referenced in the complaint. *See* ECF No. 25, Exs. 1–3. Langsdale opposes Cox’s request,  
25 arguing that she may not oppose a motion for judgment by relying on facts not pled in her  
26 complaint. ECF No. 29 at 2. To determine a motion for judgment on the pleadings, I generally  
27 may look only to the contents of the pleadings. I will not consider the email communications  
28 because they are not central to Cox’s claims. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d  
992, 998 (9th Cir. 2010). Even if I could take judicial notice of the state docket and court filings,  
*Reyn’s Pasta Bella, LLC, v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006), consideration  
of those documents does not alter my analysis, so I decline to do so.

<sup>3</sup> Cox’s other allegations made against Account Corp are irrelevant to the resolution of  
Langsdale’s motion for judgment on the pleadings and thus are not repeated here.

1 Langsdale's actions violated the FDCPA or the NDTPA, or constituted abuse of process. ECF  
2 No. 24.

## 3 **II. DISCUSSION**

4 Judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is proper if,  
5 "taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a  
6 matter of law." *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1042 (9th Cir.  
7 2005) (quotation omitted). A Rule 12(c) motion is the functional equivalent of a Rule 12(b)(6)  
8 motion. *See Harris v. Orange Cty.*, 682 F.3d 1126, 1131 (9th Cir. 2012). Consequently, I must  
9 determine whether the complaint contains "sufficient factual matter . . . to state a claim for relief  
10 that is plausible on its face." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A  
11 complaint or individual claim should be dismissed without leave to amend only when "it is  
12 clear . . . that the complaint could not be saved by amendment." *Steckman v. Hart Brewing, Inc.*,  
13 143 F.3d 1293, 1296 (9th Cir. 1998).

### 14 **A. FDCPA**

15 To state a claim against Langsdale under the FDCPA, Cox must plead plausible facts  
16 alleging that (1) Cox is a "consumer" under 15 U.S.C. § 1692a(3); (2) the debt arises out of a  
17 transaction entered into for personal purposes; (3) Langsdale is a "debt collector" under 15 U.S.C.  
18 § 1692a(6); and (4) Langsdale engaged in an act or omission prohibited by the FDCPA. *Wheeler*  
19 *v. Premiere Credit of N. Am.* 80 F. Supp. 3d 1108, 1112 (S.D. Cal. 2015) (citing *Turner v. Cook*,  
20 362 F.3d 1219, 1226–27 (9th Cir. 2004)). Langsdale argues that Cox has not sufficiently alleged  
21 that it engaged in any acts or omissions that violated the FDCPA.

22 Cox alleges that all of the defendants violated "15 U.S.C. § 1692, et. seq." by (a)  
23 "mischaracterizing the character, amount, and legal status of the Debt;" (b) "employing various  
24 false representations and deceptive means to collect the alleged Debt;" and (c) "attempting to  
25 collect the Debt under false pretenses." ECF No. 1 at 5. Langsdale contends that these allegations  
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1 “are nothing more than legal conclusions . . . which fail to provide Langsdale with fair notice  
2 regarding what FDCPA sections were violated.” ECF No. 24 at 7.<sup>4</sup>

3 In the factual allegations portion of Cox’s complaint, Cox alleges that Langsdale filed a  
4 substitution of attorney notice in August 2016 but failed to serve a copy on Cox, and that in  
5 November 2016 Langsdale emailed Cox’s attorney to inform her that Account Corp had decided  
6 to dismiss the action. ECF No. 1 at 3–4. Cox also alleges upon information and belief that  
7 Langsdale failed to provide him with a validation letter that complied with 15 U.S.C. § 1692g,  
8 and “continued with its efforts to collect the Debt despite the fact that it failed to comply with  
9 section 1692[g] of the FDCPA.” *Id.* at 3. As explained below, none of these allegations provides  
10 a sufficient factual basis to sustain a FDCPA claim.<sup>5</sup>

### 11 **1. Substitution of Attorney Notice**

12 Cox fails to identify any provision of the FDCPA that was violated by Langsdale’s alleged  
13 failure to serve a substitution of attorney notice. Even if she could, the failure is not actionable.  
14 In *Okyere v. Palisades Collection, LLC*, 961 F. Supp. 2d 508 (S.D.N.Y 2013), the Southern  
15 District of New York dealt with a similar allegation. There, the plaintiff alleged that the debt  
16 collector’s failure to file, and thus serve, a substitution of attorney form violated the FDCPA. *Id.*  
17 at 517–18. Like this case, the plaintiff failed to explain how this omission fit within any of the  
18 FDCPA provisions. *Id.* at 518. The court also noted that, even if the debt collector  
19 misrepresented its counsel of record, it had no impact on the alleged harm. *Id.* The court  
20 dismissed the claim because there was “nothing in the complaint to plausibly suggest that the  
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23 <sup>4</sup> Langsdale also argues that it is not vicariously liable for the alleged actions of Account  
24 Corp or P&E. ECF No. 24 at 14–15. The complaint does not allege, nor does Cox argue in  
25 opposition, that she is basing any claims on a vicarious liability theory, so I do not consider this  
argument.

26 <sup>5</sup> Cox claims in her opposition that she alleged Langsdale violated the FDCPA by  
27 “attempting to collect a judgment that included sums that were unlawful and improperly  
28 calculated and inflated.” ECF No. 25 at 9. That allegation is not in the complaint, so I will not  
consider it.

1 failure [to file and serve a substitution of counsel notice] had any material effect on [the  
2 plaintiff's] ability to challenge the debt or the process used to collect it.” *Id.* at 518–19.

3 I find *Okyere*’s reasoning persuasive. Here, Cox has not alleged that Langsdale’s alleged  
4 omission caused any harm. She does not include any facts to reasonably infer that this omission  
5 impacted her ability to respond to the collection action or dispute her debt. Indeed, Cox’s counsel  
6 was able to contact Langsdale regarding the collection action. So this allegation, without more,  
7 does not state a FDCPA claim.

## 8 **2. Validation of Debt Letter**

9 Cox also alleges that Langsdale “failed to provide [her] with a validation of debt letter in  
10 compliance with Section 1692[g] of the FDCPA,” and “continued with its efforts to collect the  
11 Debt despite the fact that it failed to comply” with § 1692g. ECF No. 1 at 3. Section 1692g  
12 requires a debt collector to validate the debt to be collected by providing certain information  
13 related to the debt either in the initial communication with the consumer or by providing a written  
14 notice within five days after the initial communication. *See* 15 U.S.C. 1692g(a). But Cox does  
15 not sufficiently allege that Langsdale communicated with her in a manner that triggers  
16 Langsdale’s obligation to send a written validation letter. Instead, Cox alleges only that  
17 Langsdale substituted in as Account Corp’s counsel of record, served the complaint, and  
18 thereafter communicated with Cox’s counsel. The FDCPA specifically excludes  
19 “communication[s] in the form of a formal pleading in a civil action” from qualifying as an initial  
20 communication under § 1692g. 15 U.S.C. § 1692g(d). So serving the complaint on Cox and  
21 filing a substitution of attorney notice do not constitute an initial communication. And  
22 communications with a consumer’s attorney are not actionable under the FDCPA, so Langsdale’s  
23 email to Nelson also does not trigger § 1692g. *See Guerrero v. RJM Acquisitions, LLC*, 499 F.3d  
24 926, 934 (9th Cir. 2007).<sup>6</sup> Without some allegation that Langsdale communicated with Cox, she  
25 cannot maintain a § 1692g claim against it.

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27 <sup>6</sup> Even if Langsdale’s communications with Nelson were “initial communications” that  
28 could trigger § 1692g, Cox alleges that Langsdale abandoned its collection activities when it first  
communicated with Nelson by dismissing the action, and therefore was not required to provide a

1                               **3.       Dismissal of the Collection Action**

2               Cox does not sufficiently allege that Account Corp’s decision to have Langsdale dismiss  
3 the collection action violates the FDPCA. Again, Cox does not specify which provision of the  
4 FDCPA Langsdale’s action violates. Langsdale argues that “the only section of the FDCPA that  
5 this allegation might relate to is Section § 1692e.” ECF No. 24 at 13. That section states, “a debt  
6 collector may not use false, deceptive, or misleading representation or means in connection with  
7 the collection of any debt,” which includes “the threat to take any action that cannot legally be  
8 taken or that is not intended to be taken.” 15 U.S.C. § 1692e. Cox’s bare allegation that  
9 Langsdale dismissed the action soon after Nelson communicated with Langsdale is not sufficient  
10 to state a claim under this provision. Cox alleges no facts indicating that Langsdale had no right  
11 to institute or did not intend to litigate the action. Cox does not provide an alternative provision  
12 that Langsdale’s actions may violate. So Cox does not state a FDCPA claim based on  
13 Langsdale’s dismissal of the collection action.

14               None of the factual allegations Cox asserts sufficiently states a FDCPA claim against  
15 Langsdale. I therefore dismiss this claim with leave to amend if Cox can allege facts to cure the  
16 deficiencies discussed above.<sup>7</sup>

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19 validation of debt letter under § 1692g(b). *Guerrero*, 499 F.3d at 940 (“It would make little sense  
20 to impose an independent obligation to verify the alleged debt on a collector who, for example,  
decides a disputed debt is not worth the effort and chooses to close or sell.”).

21               <sup>7</sup> Cox also argues in her response that Langsdale’s actions constitute a “continuing  
22 violation” of the FDCPA by prosecuting a case to collect allegedly unlawful collection fees  
assessed by Account Corp. ECF No. 25 at 9. The continuing violations doctrine is used to either  
23 toll the statute of limitations or introduce evidence of conduct that occurred after the statute of  
24 limitations to establish a pattern of actionable conduct. *See Pisciotto v. Teledyne Indus., Inc.*, 91  
F.3d 1326, 1332 (9th Cir. 1996) (“Under the [continuing violations] theory, the statute of  
25 limitations does not begin to run until the last [violation] occurs.”); *Joseph v. J.J. Mac Intyre*  
*Cos.*, 281 F. Supp. 2d 1156, 1159–62 (N.D. Cal. 2003) (applying the continuing violations  
26 doctrine to the FDCPA’s statute of limitations period). It cannot be used to hold someone liable  
for someone else’s actions. *Id.* Because Langsdale does not argue that Cox’s FDCPA claims are  
27 time-barred, the continuing violations analysis is inapposite.

1           **B.       Deceptive Trade Practices**

2           The NDTPA is codified at Nevada Revised Statutes Chapter 598. If a party is found to  
3   have engaged in a “deceptive trade practice” under the NDTPA, it may be subject to civil liability  
4   under Nevada Revised Statutes § 41.600, which allows victims of consumer fraud to sue for  
5   damages, equitable relief, and attorney’s fees. Cox alleges that all of the defendants “engaged in  
6   unfair or deceptive acts or practices in the conduct of its commerce or trade through its unfair and  
7   deceptive debt collection and litigation activities in violation of NRS Chapter 598.” ECF No. 1 at  
8   6.

9           Chapter 598 contains ten sections; each defines a separate set of deceptive trade practices.  
10   *See generally*, Nev. Rev. Stat. §§ 598.015, 598.016, 598.017, 598.018, 598.092, 598.0921,  
11   598.0922, 598.0923, 598.0924, and 598.0925. Each of those sections further enumerates  
12   categories of conduct, some identifying as many as 16 sub-categories of prohibited acts. *Id.*  
13   Merely alleging a general violation of Chapter 598 is insufficient to give Langsdale notice of the  
14   prohibited conduct it engaged in or the provisions it must defend against.

15          In her opposition, Cox contends that the specific NDTPA provisions Langsdale violated  
16   “include, but are not limited to” § 598.0923(3), § 598.0923(2), and § 598.0915(15). Cox’s  
17   complaint does not allege any facts to support a claim under any of these sections. However, I  
18   will consider them to determine whether amendment to include claims based on these provisions  
19   would be futile.

20          Section 598.0923(3) states that a person engages in a “deceptive trade practice” when he  
21   or she “violates a state or federal statute or regulation relating to the sale or lease of goods or  
22   services.” Langsdale argues that the FDCPA is not a statute “relating to the sale or lease of goods  
23   or services,” and therefore any alleged violation of the FDCPA cannot form the basis of a claim  
24   under § 598.0923(3). Cox contends that her claims are “related to the purchase of services”—i.e.,  
25   the debt arose from the purchase of medical services—so the violation of the FDCPA would also  
26   violate § 598.0923(3).

1           The FDCPA was enacted to “eliminate abusive debt collection practices by debt  
2 collectors, to insure that those debt collectors who refrain from using debt collection practices are  
3 not competitively disadvantaged, and to promote consistent State action to protect consumers  
4 against debt collection abuses.” 15 U.S.C. § 1692(e). It regulates debt collection practices, not  
5 the sale or lease of goods and services. The fact that Cox’s debt may have stemmed from the  
6 purchase of services does not transform the FDCPA into a “statute . . . relating to the sale or lease  
7 of goods or services.” Cox cannot state a claim under § 598.0923(3) based on Langsdale’s  
8 alleged FDCPA violations.

9           Nor can Cox state a claim against Langsdale under § 598.0923(2). A person violates  
10 § 598.0923(2) when he or she “fails to disclose a material fact in connection with the sale or lease  
11 of goods or services.” But Langsdale’s alleged debt collection efforts were not in connection  
12 with the sale or lease of goods or services. Langsdale was pursuing litigation to collect on Cox’s  
13 pre-existing debt. Thus, Cox’s allegations, even when taken as true, cannot establish that  
14 Langsdale engaged in a deceptive trade practice under § 598.0923(2).

15           Cox does not provide any factual allegations to support a claim under § 598.0915(15),  
16 which is violated when a person “knowingly makes any other false representation in a  
17 transaction,” or any other provision of the NDTPA. I grant Langsdale’s motion to dismiss Cox’s  
18 NDTPA claim with leave to amend if she can allege facts indicating that Langsdale violated the  
19 NDTPA.

### 20           **C.     Abuse of process**

21           To successfully allege a tort claim for abuse of process under Nevada law, a plaintiff must  
22 establish two elements: (1) the defendant had an ulterior purpose in the underlying lawsuit other  
23 than resolving a legal dispute, and (2) the defendant willfully and improperly used the legal  
24 process to accomplish that purpose. *LaMantia v. Redisi*, 38 P.3d 877, 880 (Nev. 2002). The  
25 plaintiff “must provide facts, rather than conjecture, showing that the party intended to use the  
26 legal process to further an ulterior purpose.” *Land Baron Inv. v. Bonnie Springs Family LP*, 356  
27 P.3d 511, 519 (Nev. 2015). An action for abuse of process hinges on misuse of regularly issued  
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1 process, in contrast to malicious prosecution which rests upon wrongful issue of process. *Dutt v.*  
2 *Kremp*, 844 P.2d 786, 790 (Nev. 1992), *overruled on other grounds by LaMantia*, 38 F.3d 877  
3 (Nev. 2002). The mere filing of a complaint with malicious intent is insufficient to state an abuse  
4 of process claim. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Rather, there must  
5 also be some act after filing that abuses the process. *Id.*

6 The Supreme Court of Nevada has found improper willful acts where a defendant  
7 commits a flagrant or extraordinary act that perverts the legal process. For example, in *Nevada*  
8 *Credit Rating Bureau v. Williams*, the court affirmed a finding of abuse of process where a  
9 plaintiff attached an entire property worth over \$30,000 to secure a debt of less than \$5,000, with  
10 the ulterior purpose to coerce payment rather than to obtain security for the debt. 503 P.2d 9, 12-  
11 13 (Nev. 1972). Similarly, the court found abuse of process when a city attorney charged a police  
12 officer with a criminal violation to obtain the officer's voluntary resignation. *Posadas v. City of*  
13 *Reno*, 851 P.2d 430, 445 (Nev. 1993). Coercing a nuisance settlement where there was no legal  
14 basis for a claim is also an abuse of process. *Bull v. McCuskey*, 615 P.2d 957, 960 (Nev. 1980).

15 Cox's allegations do not state a claim for abuse of process against Langsdale because Cox  
16 does not allege that Langsdale did anything beyond filing a complaint to collect a debt. Cox  
17 alleges that Langsdale "caused the offending complaint to be served" and continued prosecuting  
18 the case in violation of 15 U.S.C. § 1692g. There is no indication that Langsdale acted with an  
19 improper purpose or did anything after filing the complaint that would constitute an improper use  
20 of the legal proceeding. Nor does any allegation that Langsdale continued to prosecute the case  
21 to collect unlawful fees that Account Corp assessed amount to an abuse of process claim. Cox  
22 does not claim that Langsdale pursued the allegedly unlawful fees with the intent to coerce Cox  
23 into paying the rest of her debt, or for any other nefarious purpose. I grant Cox leave to amend  
24 her abuse of process claim against Langsdale if she can allege additional facts demonstrating that  
25 Langsdale undertook improper, willful acts with an ulterior purpose in the collection action.

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